IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6004 OF 2006

Parvatibai Pundlik Dhongade .. Petitioner
Versus
Pravin Nanji Gadda (Gada)
and Ors. .. Respondents

Mr.M.S.Karnik for petitioner
Mr.Sanjay Jain with Mr.Brijesh Upadhyay i/b. Purnanand and Co. for respondent Nos. 1 to 5
Mr.J.Shekhar for respondent Nos. 6

CORAM : S.C.DHARMADHIKARI, J.

DATE : 22nd June 2007.

P.C.

. This matter was argued before me for some time after which I had directed the Advocate appearing for Municipal Corporation to take instructions.

2. An affidavit in reply is filed which does

not clarify the position at site leave alone making the stand of Nashik Municipal Corporation clear about location of Development Plan Road.

3. It is in these circumstances, that I have proceeded to hear Mr.Karnik for petitioners and Mr.Jain for respondent Nos. 1 to 5 - original plaintiffs. Grievance of Mr.Karnik is that the trial court did not think it fit to restrain petitioners/original defendant Nos. 3 to 7 to the subject suit from putting up any construction in their property. However, reversing that order of the trial court, the lower appellate court has restrained even the petitioners original defendant Nos. 3 to 7 from carrying out any construction till the disposal of the suit.

4. The argument of Mr.Karnik is that the trial court on the basis of the documents produced recorded a prima facie opinion that present defendants are carrying out construction

on their plot/land in accordance with the plans approved by the Corporation and they cannot be restrained, at the instance of plaintiff from making construction on their property. In other words, their rights could not have been curtailed in this manner.

5. Mr.Jain on the other hand submits that the core issue in the matter is whether the development plan road proposed by the Corporation and earlier passing through property of defendant Nos. 3 to 7 can suddenly be re-aligned so as to pass through plaintiff's property. This issue will have to be answered on the touch-stone of the provisions of the Maharashtra Regional and Town Planning Act, 1966 (M.R.T.P. Act for short) proposals and designations in the Development plan so also on the basis of the materials produced with regard to compliance with the relevant statutory provisions. It is not open to the Municipal Commissioner to exercise his

discretionary powers conferred by D.C. Rule 6.6.2 and change the alignment of the road. This is a modification to the Development Plan and therefore, compliance with section 37 of M.R.T.P. Act and other relevant provisions is necessary.

6. Nashik Municipal Corporation despite adjournment has been unable to make its stand clear nor is in a position to produce documents even in this Court.

7. Considering the issue involved in the matter, I am in agreement with the submissions of Mr.Jain that at this prima facie stage there is no reason to interfere with the interlocutory order passed in the suit. The lower appellate court is of the opinion that pending the decision on the legal and factual issues, status quo at site should continue till hearing of the suit. Mr.Karnik’s prayer to allow and complete the construction, which has been made pursuant to the

order of the trial court and during the pendency of the appeal, cannot be acceded to. Even completing the construction already made at site would, at a subsequent stage, create complications. Similarly at this prima facie stage, when no material is forthcoming with regard to any rights created, interest of justice would be sub-served if this petition is disposed of with a direction to the trial court to expedite the hearing of R.C.S.No.387 of 2004.

8. Accordingly, this petition is disposed of with the above directions. The order of lower appellate court to continue till hearing and final disposal of the suit. All contentions on merits on the controversy are expressly kept open. The trial court to decide the matter uninfluenced by any observations in the order of the lower appellate court so also of this Court. Suit be disposed of within six months from the date of receipt of copy of this Court’s order.

(S.C.Dharmadhikari, J)